

## **REMARKS**

### **Interview**

Applicants sincerely appreciate the Examiner's having conducted a telephonic interview on September 17, 2009. During the interview, the figure objections and the prior art rejections were discussed.

### **Status of the Claims**

Prior to this amendment, claims 1-19 were pending in the application. Claims 1, 3, 4, and 6-8 are cancelled herein without prejudice. Claims 2, 5, 9-15, and 18 are amended herein. New claims 20 and 21 are added. Thus, upon entry of this amendment, claims 2, 5, 9-21 will be pending and presented for examination.

### **Amendments to the Drawings**

Applicants submit herewith replacement sheets 1/5 to 5/5 containing Figures 1-6. In the replacement sheets, Applicants have deleted sheet 6/6, which contained Figure 7. As a result, the replacement sheets have been renumbered 1/5 to 5/5.

In addition, Figure 5 has been amended to add reference number 50 which points to the peninsula. Support for the amendment can be found in the specification at least, for example, in paragraph 70 of the published application.

Applicants submit that the amendments to the drawings introduce no new matter.

### **Amendments to the Claims**

Claim 1 has been cancelled and rewritten as new claim 20. Support for new claim 20 is found at least, for example, in the specification at paragraphs 26 and 70 of the published application, and in original claim 1.

Claims 3, 4, and 6-8 are cancelled.

Claims 2, 5, and 9-14 have been amended to depend directly or indirectly from new claim 20, to remove figure reference numbers, and for consistency with new claim 20.

Claim 15 has been amended to remove figure reference numbers and to more clearly recite the structure of the peninsula. Support for the amendments to claim 15 is found at least, for example, in the specification at paragraphs 58 and 70 of the published application.

Claim 18 has been amended to remove figure reference numbers.

Support for new claim 21 is found at least, for example, in the specification at paragraph 70 of the published application.

Applicants submit that the amendments to the claims introduce no new matter.

#### Drawing Rejection

In the Office Action, new Figure 7 was objected to as allegedly introducing new matter. Without acquiescing to the rejection and solely to advance prosecution, Applicants have deleted Figure 7. Applicants submit that the deletion of Figure 7 renders the rejection moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

#### Drawing Objections

In the Office Action, the drawings were objected to as allegedly failing to show every feature of the invention as specified in the claims. Specifically, the Office Action stated that (1) plastic material in the cross-sectional views must be shown and (2) the two spaced apart parallel legs rooted side by side on the peninsula must be shown.

As noted in the interview summary, the Examiner indicated that the amended drawings submitted on December 22, 2008 would be acceptable if resubmitted without Figure 7. To expedite prosecution, Applicants have cancelled Figure 7 and have resubmitted the amended drawings. Accordingly, Applicants respectfully request reconsideration and withdrawal of the objection.

Without acquiescing to the objection and solely to advance prosecution, Applicants have cancelled claim 6, which recited two spaced apart parallel legs. Applicants submit that the cancellation of claim 6 renders the objection moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of the objection.

#### Claim Rejections under 35 U.S.C. § 103(a) – Spreckelsen /Mavin

In the Office Action, claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Spreckelsen et al. (GB 2,353,789 and GB 2,377,701) (“Spreckelsen”) in view of Mavin et al. (EP 1,266,839) (“Mavin”).

The Office Action contended that Applicants’ claims were drawn to a closure only. (Office Action at pg. 5). While Applicants disagree with this contention, to expedite prosecution Applicants have amended claim 15 and have presented new independent claim 20, to clarify that these claims include a closure and a seal.

As previously noted, Mavin relates to the *peeling* of a foil, not the *tearing* of a foil or any other sealing means. Mavin is primarily concerned with grasping the outer edge of the foil and removing the whole foil from a container by breaking the bond between the foil and the container. Mavin at column 1, lines 50-53 (“In order to remove the foil liner it is intended that the consumer pull the tab in such a way as to overcome the bond between the foil liner and the container.”). The present invention, on the other hand, relates to the tearing of the foil itself and therefore only partial removal of the seal in use, as the foil between flange 24 and the container body remains in place.

Applicants also submit that Mavin fails to teach or suggest a peninsula as recited in amended claim 20. Amended claim 20 recites, in relevant part:

a removable part disposed over the opening and connected to the spout by a frangible region, the removable part including a peninsula formed between the frangible region and a slit that divides the removable part and extends into the removable part from an edge of the removable part.

Similarly, amended independent claim 15 recites, in relevant part:

a removable part disposed over the opening and connected to the spout by a frangible region at an edge of the removable part, the removable part having a corner-shaped peninsula defined by a slit extending into the removable part from the edge of the removable part.

Thus, Applicants’ peninsula is a discrete structure having a specific functionality that is not contemplated by Mavin. For example, Applicants’ published application teaches:

[0030] In an alternative embodiment the peninsula is defined in the removable part by means of a slit extending across the removable part from the periphery.

[0031] In all cases the peninsula structure results in a limited arc of the frangible

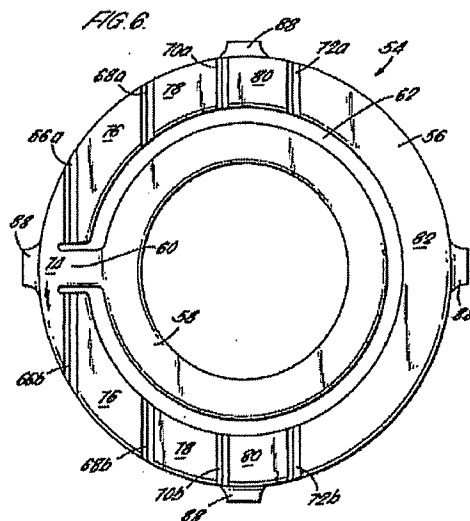
region to which a pulling force created by the pulling device is applied and thereby increases a tearing pressure on the foil.

...

[0070] ... The slit 70 effectively divides the plate 10 into a U shape with a pull ring attached solely and securely to one limb that is the peninsula 50. Due to the open slit 70, the pulling force applied by pulling on the pull ring 12 is concentrated solely on the limb to which it is attached. The foil 8 will initially stretch in the region attached to the enlarged land portion 38. The presence of the slit 70 reduces the arc of the frangible region over which the force is applied. ...

Thus, Applicants' embodiments describe the peninsula as a modification of the normal profile in order to create a mounting for the leg(s), which results in a pulling force being applied only to a limited area (i.e., the peninsula).

In contrast, Mavin teaches a peripheral portion (i.e., an annular ring) having grooves (66a-b, 68a-b, 70a-b, 72a-b), which act as relief cuts. The grooves allow the peripheral portion to bend when force is applied to the pull tab. However, there is no structure in Mavin that could be considered a peninsula as recited in Applicant's amended claims. (See Mavin's figure 6, reproduced below). Mavin's grooves 66-72 must not cut through the material of the peripheral portion in order for the pull-tab to remain operable. Therefore, grooves 66a-b do not cause the sector adjacent to tongue 60 (similar to Applicants' leg) to function as a peninsula as required by Applicants' claim because the sector is not defined by real edges. Similar to a "peninsula" metaphor, the sector cannot be considered to be a peninsula because it has no coastline separating it from the mainland.



In addition, the pulling force supplied by the user after the user has lifted Mavin's ring pull 58 would be applied across the arc at least from 66a to 66b (*See* Mavin at col. 6, lns. 41-48), but would not necessarily be limited to that arc. In fact, since the grooves 66-72 do not cut through the ring, the pulling force would not be restricted as Mavin suggests.

Mavin is sufficient to facilitate a peeling operation, but larger forces are needed to create sufficient pressure to tear a seal, as required by Applicants' claims. Therefore, even if a person of skill in the art applied the teachings of Mavin, the skilled person would still not have solved the technical problem set out in the present specification.

For the foregoing reasons, Applicants submit that Mavin fails to teach or suggest a peninsula structure as taught and claimed by Applicants. Spreckelsen also fails to teach or suggest a peninsula, as the Office Action admits. Spreckelsen and Mavin, either alone or in combination, therefore fail to render amended claims 15 or 20, or the claims that depend therefrom, obvious. Accordingly, Applicants request reconsideration and withdrawal of the rejection.

*Claim Rejections under 35 U.S.C. § 103(a) – Kawajiri /Mavin*

In the Office Action, claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawajiri et al. (US 4,948,015) ("Kawajiri") in view of Mavin.

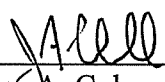
Mavin fails to teach or suggest a peninsula for the above-stated reasons. Kawajiri also fails to teach or suggest a peninsula, as the Office Action admits. Kawajiri and Mavin, either alone or in combination, therefore fail to render the claims obvious. Accordingly, Applicants request reconsideration and withdrawal of the rejection.

Conclusion

In view of the foregoing remarks, Applicants submit that the claims are in condition for allowance. The Examiner is invited to contact the undersigned if the Examiner believes an interview could advance prosecution of the application.

Respectfully submitted,

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